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Attorneys for Defendant Edleman

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JACK MARRONE, husband, KAREN
MARRONE, wife, both individually and
in their capacity as parents and guardians
for VIDA MARRONE, a minor, and
MATTHEW ADAM MARRONE
Plaintiffs

v.

ALLSTATE INSURANCE COMPANY,
LINDA M. EDLEMAN, FRED SCHAFER,
MT. GRETNAL REALTY, and
HOUSEMASTERS
Defendants

NO.: 1:CV-01-0773

JUDGE KANE

Civil Action Law

Jury Trial Demanded

FILED
HARRISBURG, PA
11/27/2002
MARIE L. HARRIS, CLERK
[Signature]

**RESPONSE OF DEFENDANT LINDA M. EDLEMAN TO
PLAINTIFFS' MOTION TO PERMIT THE FILING OF PLAINTIFFS'
MEDICAL CAUSATION EXPERT REPORTS *NUNC PRO TUNC***

AND NOW, comes Defendant Linda M. Edleman, by and through her attorneys, Thomas, Thomas & Hafer, LLP, John Flounlacker, Esquire, John J. McNally III, Esquire, and Shawn E. Smith, Esquire, and hereby files this Answer to Plaintiffs' motion to permit the filing of Plaintiffs' causation expert reports *nunc pro tunc*, and in support thereof aver the following:

1. Plaintiffs and their former legal counsel initiated this lawsuit by filing their Complaint on May 3, 2001.

2. On or about September 21, 2001, a Joint Case Management Plan was submitted to the Court.

3. On September 26, 2001, the parties participated in the initial Case Management Conference.

4. On September 27, 2001, this Honorable Court entered a Case Management Order which, among other things, required that all fact discovery be concluded by February 28, 2002 and that the parties were required to produce their expert reports by March 29, 2002. A copy of the docket sheet indicating the filing of this Order is attached hereto as Exhibit A.

5. On November 2, 2002, upon receiving leave of Court, Plaintiffs filed an Amended Complaint.

6. On November 6, 2001, Plaintiffs' former counsel advised all of the parties that he would be withdrawing his representation of Plaintiffs.

7. Ultimately, on November 21, 2001, a Motion to Withdraw as Counsel was filed by Attorney Richard F. Stevens.

8. On December 19, 2001, this Honorable Court granted Attorney Stevens' request to withdraw his representation of Plaintiffs.

9. On December 21, 2001, this Honorable Court granted Plaintiffs' first request for an extension of time requested for the purpose of securing new legal counsel.

10. On January 15, 2002, this Honorable Court granted Plaintiffs' second request for an extension of time which was requested for the purpose of securing new counsel to proceed with this litigation.

11. On February 1, 2002, Louis M. Tarasi, Jr., Esquire, of the law firm of Tarasi, Tarasi & Fishman, P.C., entered his appearance for Plaintiffs.

12. On or about February 19, 2002, this Honorable Court entered a Revised Case Management Order which provided, among other things, that the discovery cut off for this case was to occur on June 28, 2002 and that expert reports were to be produced by the parties by July 12, 2002. See Exhibit A.

13. On July 2, 2002, Plaintiffs filed a Motion seeking a third extension for additional time for the purposes of pursuing further fact discovery.

14. On July 5, 2002, this Honorable Court granted the above-referenced Motion and issued a new case management order which provided that discovery was to conclude by August 30, 2002, reports of experts were due on September 13, 2002 and supplemental expert reports were due by September 27, 2002. See Exhibit A.

15. On October 18, 2002, moving Defendant received a facsimile copy of Plaintiffs' request, seeking a fourth extension of time for the purposes of securing a report from an unidentified medical expert.

16. To that date, Plaintiffs had not produced any report from a medical expert. Nor had Plaintiffs identified any medical expert they planned to use in connection with prosecuting this case.

17. The Motion for Extension of Time in which to File Expert Reports filed by Plaintiffs was their fourth request for enlargements of time in connection with this lawsuit.

18. Moreover, this request was made approximately 30 days after the deadline for production of expert reports expired.

19. On October 31, 2002, before the Court ruled on Plaintiffs' Motion for Extension of Time, Plaintiffs filed this motion to permit the filing of Plaintiffs' medical causation expert reports *nunc pro tunc*.

20. This Motion is Plaintiffs' fifth attempt to somehow extend time in this case.

21. On November 5, 2002, this Honorable Court entered an Order stating that the Plaintiffs' Motion for Extension of Time was denied, and that "all parties shall comply with the deadlines previously set in this Court's Order of July 5, 2002." A copy of this Court's November 5, 2002 Order denying Plaintiffs' Motion to Extend Time is attached hereto as Exhibit B.

22. As the Court's July 5, 2002 Order specifically stated that the parties shall comply with the deadlines previously set forth in this Court's Case Management Plan, Defendant Linda M. Edelman did not originally file a response to Plaintiffs' Motion to permit the filing of Plaintiffs' medical causation expert reports *nunc pro tunc*, believing that the Court's Order dealing with the maintenance of the Case Management Plan was clear.

23. To the extent that the November 5, 2002 Order of this Court left the Plaintiffs' Motion to permit the filing of Plaintiffs' medical causation expert reports *nunc pro tunc* outstanding, Defendant Linda M. Edelman now files this Answer.

24. As with the Plaintiffs' Motion to extend time, moving Defendant strongly opposes the Plaintiffs' instant request because it would affect all of the other previously established deadlines in this case, and Plaintiffs' request is simply his motion to extend time dressed in different clothing.

25. Additionally, Defendant Edelman submits that she would be greatly prejudiced by the allowance of any such motion.

26. Specifically, throughout the course of discovery, even when directly asked what physicians or other experts Plaintiffs had seen with regard to this litigation, Plaintiffs have refused to name any experts that they "may or may not have seen."

27. Plaintiffs instant motion, and their failure to comply with this Court's Case Management Plan of July 5, 2002, are tantamount to attempting trial by surprise.

28. Moreover, this litigation has caused significant and personal harm to Defendant Edelman.

29. Since this lawsuit has been filed, Ms. Edelman has had a very difficult time in securing homeowner's coverage for her residence. In fact, Ms. Edelman has been placed on a high risk homeowner status as a direct consequence of this litigation, and accordingly, her premiums have gone up substantially since Plaintiffs initiated this lawsuit.

30. Defendant Edelman fears that the longer this litigation is allowed to exist, the more likely it is that her prior homeowner's insurance carrier will not provide her with a defense to the claims that are being made by Plaintiffs in this litigation.

31. This litigation has also cast a cloud over Ms. Edelman's finances and her ability to borrow money for her other personal needs.

32. Moving Defendant Edelman submits that this Honorable Court and the parties to this litigation have been more than fair to Plaintiffs in regard to their repeated requests for extensions of time for the prosecution of this litigation and in regard to their repeated attempts to submit expert reports over two months late.


33. Finally, the original deadline for expert reports was September 13, 2002, and over 30 days went by after the deadline before Plaintiffs ever mentioned an inability to obtain an expert report on the basis of their expert's busy schedule.

34. In fact, it was only after Defendant Edelman filed her Motion for Summary Judgment that Plaintiffs claimed that an expert's busy schedule was the reason for their inability to comply with any of the previous deadlines.

Wherefore, Defendant Linda M. Edleman respectfully requests that this Honorable Court deny the Plaintiffs' Request to permit the filing of Plaintiffs' medical causation expert reports *nunc pro tunc* and continue to require that the parties proceed as provided for in the Court's Scheduling Order of July 5, 2002.

Respectfully submitted,

THOMAS, THOMAS & HAFFER, LLP

By: 
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Date: November 27, 2002

CERTIFICATE OF SERVICE

I, the undersigned, hereby state that a true and correct copy of the foregoing document(s) was served upon all counsel of record by first class United States mail, postage prepaid, addressed as follows, on the date set forth below:

By First Class U.S. Mail:

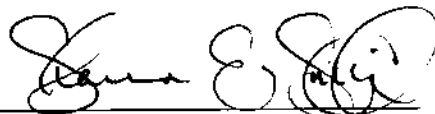
Gianni Floro, Esquire
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THOMAS, THOMAS & HAFFER, LLP

A handwritten signature in black ink, appearing to read "Shawn E. Smith", written over a horizontal line.

Shawn E. Smith, Esquire

Dated: 11/27/02

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P. 02

ATYADM HBG

U.S. District Court
Middle District of Pennsylvania (Harrisburg)

CIVIL DOCKET FOR CASE #: 01-CV-773

Marrone, et al v. Allstate Insurance, et al
Assigned to: Judge Yvette Kane
Demand: \$0,000 42075
Lead Docket: None
Dkt# in other court: None

Filed: 05/03/01
Jury demand: Both
Nature of Suit: 360
Jurisdiction: Diversity

Cause: 28:1332 Diversity-Personal Injury

JACK MARRONE, husband,
individually and in his
capacity as parent and
guardian for Vida Marrone, a
minor
 plaintiff

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 [term 12/21/01]
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Timothy T. Stevens
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guardians for Vida Marrone, a
minor
 plaintiff

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Karen Marrone
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v.

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1:01cv773 Marrone, et al v. Allstate Insurance, et al

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5/3/01 1 COMPLAINT re: Personal Injury Receipt #: 83574 Amt: 150.00 (hm) [Entry date 05/03/01]

5/3/01 -- SUMMONS ISSUED to Attorney Timothy Stevens as to defendant Allstate Insurance, defendant Linda M. Edleman, defendant Fred Schafer, defendant Mt. Gretna Realty, defendant House Masters with Plaintiff's packet (hm) [Entry date 05/03/01]

5/9/01 2 LETTER from court to counsel RE: case assignment & procedure. (seal) [Entry date 05/09/01]

6/18/01 3 ENTRY OF ATTORNEY APPEARANCE for defendant Allstate Insurance by James G. Nealon, III, Esquire and c of s. (jh) [Entry date 06/19/01]

7/2/01 4 WAIVER OF SERVICE OF SUMMONS returned as to defendants; request sent 5/9/01. (jh) [Entry date 07/03/01]

7/6/01 5 MOTION by defendant Fred Schafer, defendant Mt. Gretna Realty to dismiss case with attached exhibits and c/s. (ts) [Entry date 07/09/01]

7/12/01 6 ENTRY OF ATTORNEY APPEARANCE for defendant Linda M. Edleman by atty John Flounlacker; C/S. (vg) [Entry date 07/13/01]

7/16/01 7 BRIEF by defendant Fred Schafer, defendant Mt. Gretna Realty IN SUPPORT of motion to dismiss case [5-1] C/S (sm) [Entry date 07/17/01]

7/20/01 8 ANSWER and AFFIRMATIVE DEFENSES by defendant House Masters; w/ jury demand; with exh and c/s. (sc) [Entry date 07/23/01]

7/25/01 9 RESPONSE by plaintiffs to mtn of defts Fred Schafer and Mt. Gretna Realty to dismiss. C/S, Propo. (pm) [Entry date 07/26/01]

7/30/01 10 ANSWER by defendant Allstate Insurance; jury demand; C/S. (vg) [Entry date 07/31/01]

8/6/01 11 ANSWER by defendant Linda M. Edleman; jury demand; C/S. (vg) [Entry date 08/07/01]

8/6/01 11 CROSSCLAIM by defendant Linda M. Edleman against defendant Fred Schafer; C/S. (vg) [Entry date 08/07/01]

8/6/01 11 CROSSCLAIM by defendant Linda M. Edleman against defendant Mt. Gretna Realty; C/S. (vg) [Entry date 08/07/01]

8/6/01 11 CROSSCLAIM by defendant Linda M. Edleman against defendant House Masters; C/S. (vg) [Entry date 08/07/01]

8/13/01 12 BRIEF by plaintiffs IN OPPOSITION to motion to dismiss case [5-1]; reply brief due 8/27/01; with exh and c/s. (sc) [Entry date 08/14/01]

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Proceedings include all events.

1:01cv773 Marrone, et al v. Allstate Insurance, et al

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8/15/01 13 ANSWER by cross-defendant Fred Schafer to CROSSCLAIM of Linda M. Edleman and c of s. [11-1] (jh) [Entry date 08/16/01]

8/17/01 14 ORDER by Judge Yvette Kane Scheduling conf set for 10:00 a.m. 9/26/01 (cc: all counsel, court) (seal) [Entry date 08/17/01]

8/21/01 15 REPLY BRIEF by defendant Fred Schafer, defendant Mt. Gretna Realty in support of motion to dismiss case [5-1]. C/S. (pc) [Entry date 08/21/01]

9/24/01 16 CASE MANAGEMENT FORM returned by cnsl. (jh) [Entry date 09/25/01]

9/26/01 17 MOTION by plaintiffs for leave to amend complt to add add'l pltf, Matthew Marrone; proposed amd complt att; C/S; Propo. (vg) [Entry date 09/27/01]

9/26/01 18 BRIEF by plaintiffs IN SUPPORT of motion for leave to amend complt to add add'l pltf, Matthew Marrone [17-1]. (vg) [Entry date 09/27/01]

9/27/01 19 MINUTE SHEET from CMC held by Judge Kane on 9/26/01; termed ddl. (vg) [Entry date 09/28/01]

9/27/01 20 CASE MANAGEMENT ORDER by Judge Yvette Kane: Close of Fact Discovery: 2/28/02; Pretrial Memorandum due: 7/19/02; Pretrial and Settlement Conference: 10:00 a.m. - 7/25/02; Jury Selection and Trial: 9:30 a.m. - 8/5/02 Case placed on STANDARD Case Mgmt. Track. See order for further details. (cc: all counsel court, Ctrptr., Ctrm. Dep.) (vg) [Entry date 09/28/01]

10/9/01 21 SUBSTITUTION OF COUNSEL; terminating attorney Timothy T. Stevens for pltf's and substituting attorney Richard F. Stevens. C/S (pm) [Entry date 10/10/01]

10/19/01 22 ORDER by Judge Yvette Kane Upon consideration of the pltf's' mtn to amend their complaint to add the additional pltf, Matthew Marrone, to the above captioned matter, and the responses thereto, IT IS ORDERED that said mtn is granted, and pltf's may amend their complaint to add the aforementioned additional pltf. [17-1] (cc: all counsel & Ct.) (jh) [Entry date 10/22/01]

11/2/01 23 AMENDED, complaint [1-1] n; jury demand; adding Matthew Adam Marrone with c/s. (ts) [Entry date 11/05/01]

11/15/01 24 MOTION by plaintiff to withdraw attorney Richard F. Stevens, Esq. with c of s and propo. (mc) [Entry date 11/16/01]

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Proceedings include all events.
 1:01cv773 Marrone, et al v. Allstate Insurance, et al

ATY
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- 11/21/01 25 ORDER by Judge Yvette Kane striking motion to withdraw attorney Richard F. Stevens, Esq. for failure to comply with Local Rule 7.1 [24-1] (cc: all counsel, court) (jk) [Entry date 11/21/01]
- 11/23/01 26 MOTION by Jack Marrone, Karen Marrone, Matthew Adam Marrone to withdraw Richard F. Stevens as attorney Certificate of Concurrence, C/S, propo. (mc) [Entry date 11/26/01] [Edit date 11/26/01]
- 11/23/01 27 BRIEF by plaintiffs Jack Marrone, Karen Marrone and Matthew Adam Marrone IN SUPPORT of motion to withdraw Richard F. Stevens as attorney [26-1]. (mc) [Entry date 11/26/01]
- 12/10/01 28 ANSWER TO AMENDED COMPLAINT and CROSSCLAIM by defendant Linda M. Edleman against defendants Fred Schafer, Mt. Gretna Realty and House Masters and c of s. Jury trial demanded. (jh) [Entry date 12/11/01]
- 12/11/01 29 ORDER by Judge Yvette Kane - IT IS HEREBY ORDERED THAT a Teleconf is scheduled for 2:00pm on 12/19/01. Pltf's cnsl shall initiate this call. Pltfs Jack and Karen Marrone shall also be a party to this call. (cc: all counsel court) (sc) [Entry date 12/12/01]
- 12/21/01 30 MINUTE SHEET of telephone conf. held on 12/19/01. termed deadline (jh) [Entry date 12/26/01]
- 12/21/01 31 ORDER by Judge Yvette Kane Pltf's cnsl. of record in this matter, Richard F. Stevens, submitted a mtn to w/draw on 11/23/01. A telephone conf. was held on the mtn on 12/19/01, with pltf's cnsl., pltfs Jack & Karen Marrone, and cnsl. for defts. Following the conf. the Court granted the mtn to w/draw. IT IS ORDERED THAT: 1) Pltfs shall obtain new cnsl. w/in 30 days of the date of this Order. Pltfs' new cnsl. shall enter his or her appearance in the matter w/in 30 days of the date of this Order. [26-1] 2) A status conf. will be held on this matter on 1/30/02, at 9:30 a.m. by telephone during which the Court will discuss scheduling issues and issue a new scheduling Order. Pltfs' new cnsl. shall initiate the telephone conf. and participate in the conf. (cc: all counsel & Ct.) (jh) [Entry date 12/26/01]
- 12/21/01 32 ORDER by Judge Yvette Kane Upon consideration of the mtn to w/draw as cnsl. for the pltf of Richard F. Stevens, Esquire, IT IS ORDERED that said mtn is granted, additionally, the deadlines in this matter which have been previously established are hereby reasonably extended. [26-1] (cc: all counsel & Ct.) (jh) [Entry date 12/26/01]
- 1/7/02 45 ANSWER by defendant House Masters to plaintiffs' amended complaint. C/S. (jk) [Entry date 03/26/02]

OCT-18-02 FRI 04:05 PM

FAX NO.

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Proceedings include all events.

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ATY?
HBG

1/15/02 33 MOTION by plaintiffs to extend time by 45 days to obtain Legal Counsel and that the teleconference be held at the end of those 45 days; with c/s. (sc) [Entry date 01/16/02]

1/22/02 34 RESPONSE by defendant Linda Edelman to pltf's request for an extension of time to file new legal cnsl. C/S, Propo. (pm) [Entry date 01/23/02]

1/23/02 35 RESPONSE by defendant House Masters to pltf's mtn for extension of time in which to obtain successor cnsl; C/S. (vg) [Entry date 01/24/02]

1/28/02 36 ORDER by Judge Yvette Kane Teleconf. RESCHEDULED TO 9:30 a.m. on 2/15/02 (cc: all counsel, court) (seal) [Entry date 01/28/02]

2/1/02 37 ENTRY OF ATTORNEY APPEARANCE for plaintiffs Jack Marrone, Karen Marrone and Matthew Adam Marrone by Louis M. Tarasi, Jr. and c of s. (jh) [Entry date 02/04/02]

2/4/02 -- SPECIAL ADMISSION FORM sent to Attorney: Louis M. Tarasi, Jr., Esquire. (jh) [Entry date 02/04/02]

2/13/02 38 ORDER by Judge Yvette Kane denying motion to dismiss case [5-1] (cc: all counsel court) (vg) [Entry date 02/13/02]

2/15/02 39 MINUTE SHEET of telephone conf before J. Kane on 2/15/02; Cnsl present termddl (pm) [Entry date 02/19/02]

2/19/02 40 CASE MANAGEMENT ORDER by Judge Yvette Kane - Jury trial set 12/2/02; Jury selection by 9:30 a.m. 12/2/02; Discovery cutoff 6/28/02; Pretrial memorandum due 11/15/02; Pretrial conference 2:00 p.m. on 11/22/02. Case placed on STANDARD Case Mgmt. Track (cc: all counsel, court) (jk) [Entry date 02/19/02]

3/4/02 41 ANSWER to complaint and CROSSCLAIM; jury demand by defendant Fred Schafer, defendant Mt. Gretna Realty; against defendant Linda M. Edleman, defendant House Masters with Cert of Service. (ao) [Entry date 03/05/02]

3/14/02 42 RESPONSE by dft Linda M. Edleman to the crsclm of dfts, F. Schafer and Mt. Gretna Realty; with c/s. (rb) [Entry date 03/15/02]

3/22/02 43 MOTION by HomeSide Lending, Inc. to intervene in the above case and permitting it to file declaratory judgment action complt.; C/S, Propo (pm) [Entry date 03/25/02]

3/22/02 44 MEMORANDUM by HomeSide Lending, Inc. IN SUPPORT OF motion to intervene in the above case and permitting it to file declaratory judgment action complt. [43-1]; C/S (pm) [Entry date 03/25/02]

OCT-21-02 MON 09:41 AM

FAX NO.

P. 01

Proceedings include all events.

ATY

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HBC

4/9/02 46 MEMORANDUM by dft House Masters IN OPPOSITION to mtn to intervene in the above case and permitting it to file declaratory jgm action complt. [43-1]; reply brief due 4/22/02; with c/a. (sc) [Entry date 04/10/02]

6/4/02 47 MINUTE SHEET - of phone conference held 6/4/02 RE: discovery dispute. (jk) [Entry date 06/04/02]

6/4/02 48 ENTRY OF ATTORNEY APPEARANCE for defendant House Masters by atty Paul E. Scanlan;C/S (pm) [Entry date 06/05/02]

7/2/02 49 MOTION by plaintiffs for an extension of an addtl 60 days for fact discvoery and that the amended case management order of 2/19/02, shall be further amended. ; c/s, propo (p [Entry date 07/03/02]

7/5/02 50 ORDER by Judge Yvette Kane - Granting pltf's motion for an extension of an addtl 60 days for fact discvoery. [49-1] Jury trial RESCHEDULED 2/3/03; Jury selection SET 9:30 a.m. on 2/3/03; Discovery EXTENDED UNTIL 8/30/02; Pretrial conference SET 2:00 p.m. on 1/22/03; Pretrial memorandum DUE 1/17/03 (cc: all counsel, court) (jk) [Entry date 07/05/02]

10/15/02 51 MOTION by dft House Masters to exceed page limitation; with cert of conc., c/s and propo. (sc) [Entry date 10/16/02]

10/17/02 52 ORDER by Judge Yvette Kane - Granting dft Housemaster's motion to exceed page limitation [51-1] (cc: all counsel, court) (jk) [Entry date 10/17/02]

cc: see attached

B

RB

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JACK MARRONE, husband, KAREN
MARRONE, wife, both individually and in their
capacity as parents and guardians for
VIDA MARRONE, a minor, and MATTHEW
ADAM MARRONE,
Plaintiff

CIVIL ACTION NO.
1:CV-01-773

v.

(Judge Kane)

ALLSTATE INSURANCE COMPANY, LINDA
M. EDLEMAN, FRED SCHAFFER, MT. GRETN
REALTY, and HOUSE MASTERS
Defendant

FILED
HARRISBURG

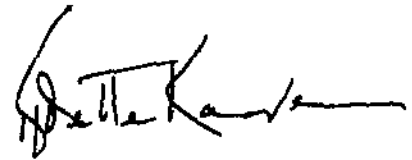
NOV 05 2002

MARY E. DIANDREA, CLERK
Per RB
DEPUTY CLERK

ORDER

AND NOW, this 5th day of November, 2002, IT IS HEREBY

ORDERED THAT Plaintiff's Motion for Extension of Time (Doc. No. 63), is **DENIED**. All parties shall comply with the deadlines previously set in this Court's Order of July 5, 2002.



Yvette Kane
United States District Judge